

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORFOLK & WESTERN RAILWAY COMPANY

Case No. 66

Dispute - Claim of the System Committee that:

1. The dismissal of Machine Operator M.W. Fisher for alleged conduct unbecoming an employe was without just and sufficient cause and on the basis of an unproven charge (File MW-BOE-77-84).
2. Claimant M.W. Fisher shall now be reinstated with seniority, vacation and all other rights unimpaired and compensated for all wage loss suffered.

Findings:

Claimant M.W. Fisher was employed by Carrier as a machine operator. On April 22, 1988, Claimant was notified to attend an investigation:

to determine your responsibility, if any, in connection with your conduct unbecoming an employe when on April 14, 1988, you submitted an adulterated urine sample or substance that was not urine to Dr. Eion Koaba, M.D., 4656 Oberline Ave., Lorain, Ohio which was contrary to instructions issued by Assistant Roadmaster D.J. Loudon and Company Policy pertaining to drugs.

The investigation was held on May 6, 1988, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf challenging the dismissal.

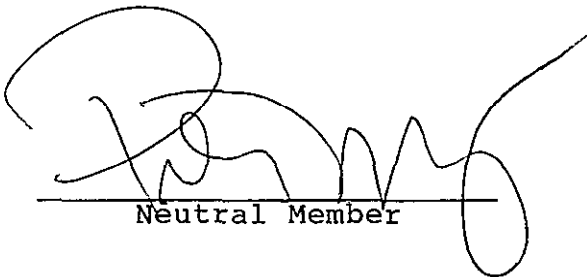
This Board has reviewed the evidence and testimony in this case and we find that the Claimant failed to comply with the instruction of his supervisors when he failed to void an unadulterated urine sample for a required drug screen testing. Moreover, falsifying a urinalysis in a required medical examination is clearly dishonest conduct unbecoming an employe. The Claimant signed his name indicating that the urine sample was his, but the record is clear that he submitted some substance other than urine.


Once this Board has determined that there is sufficient evidence in the Record to support the finding that the Claimant was guilty of conduct unbecoming an employee and failing to comply with instructions, we must next turn our attention to the nature of the discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find that action to have been unreasonable, arbitrary or capricious.

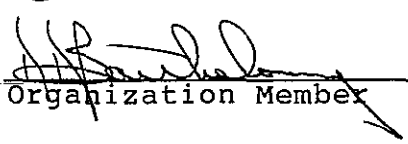
There is no question that the seriousness of this offense justifies termination. Claimant was required to bring in an urinalysis and when he did it was clearly not urine and could not be tested. That act of dishonesty is so serious that we must find that the Carrier did not act unreasonably when it completely terminated its relationship with the claimant. This Board finds no reason to set aside the dismissal.

Award

Claim denied.



Neutral Member

Carrier Member

Organization Member

Date: 3-28-90